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PATENT
TECH CENTER 1600/2900

Attorney Docket No. 213839-000111

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: McCafferty, *et al.*

Serial No.: 09/417,479

Filed: October 13, 1999

Title: Methods for Producing
Members of Specific Binding
Pairs

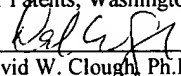
Group Art Unit: 1627

Examiner: P. Ponnaluri

CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the
United States Postal Service on the date shown below
with sufficient postage as first class mail in an envelope
addressed to: Attention: Office of Petitions,
Commissioner for Patents, Washington, D.C. 20231.

10/16/02
Date


David W. Clough, Ph.D.
Registration No. 36,107

**SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT
PURSUANT TO 37 C.F.R. § 1.97-1.99
FILED WITH PETITION TO EXPUNGE
PURSUANT TO 37 C.F.R. § 1.59**

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

This Information Disclosure Statement is being submitted pursuant to the applicants' duty of candor and in particular to the applicants' duty to disclose, under MPEP §2001.06(c), information from related litigation such as the charges of inequitable conduct in the parent of the present application, now U.S. Patent No. 5,969,108 (the '108 patent). Applicants request that the documents listed on the attached Form-PTO/SB/08A be made of official record in the above-identified application and considered by the Examiner.

Some of the documents being submitted are subject to a protective order in Civil Action No. 1:00 CV 00146 and are being submitted in a sealed, clearly labeled envelope for consideration under MPEP § 724. A Petition to Expunge under 37 C.F.R. § 1.59, along with the fee of \$130 pursuant to 37 C.F.R. § 1.17(h) are also enclosed herewith. If the submitted

documents are found not to be important in deciding whether to allow the application to issue as a patent, applicants respectfully request that the Petition to Expunge under 37 C.F.R. § 1.59 be granted and the documents identified below be returned to the attorney for applicant.

1. Agreement between Medical Research Council, Cambridge Antibody Technology Limited and Cambridge Antibody Technology Group plc, dated 1/7/97 (financial terms redacted);
2. Chiswell memo, dated July 30, 1990, transmitting a copy of the Collaborative Agreement between Cambridge Antibody Technology and The Medical Research Council, dated July 27, 1995; and
3. Administration Agreement between Cambridge Antibody Technology Ltd. and Medical Research Council, 8/1/91 (financial terms redacted).

This same Supplemental Information Disclosure Statement is being filed simultaneously in related application nos. 09/196,522; 09/196,673; 09/309,639; 09/416,902; 09/417,478; 09/417,479; 09/76,507; and 09/726,219. Each of these related applications is currently under examination by Examiner Ponnaluri. In view of the filing of the Petition to Expunge, applicants are transmitting a single copy of the cited references for consideration in each of the related applications.

**Inequitable Conduct Allegations Involving
U.S. Patent No. 5,969,108 (parent of the present application)**

The following is a brief summary of the allegations being made by MorphoSys AG with respect to inequitable conduct in obtaining the '108 patent. MorphoSys has alleged inequitable conduct on the part of Cambridge Antibody Technology Limited, ("CAT"), one of the assignees of the '108 patent, in obtaining the '108 patent. The subject matter claimed in the '108 patent generally relates to the display of single chain antibodies on the surface of filamentous bacteriophage.

One of the bases for the allegation of inequitable conduct is that the applicants did not disclose to the U.S. Patent & Trademark Office a National Institute's of Health ("NIH") grant application by Dr. George Smith relating to the display of small peptides on the surface of phage and which contains a prophetic disclosure of the display of single chain antibodies on the surface of phage which Dr. Smith characterized as speculative in the text of the grant. Documents (including deposition testimony) submitted herewith relate *inter alia* to the

specific allegations made by MorphoSys with regard to this issue, including communications between CAT personnel and their attorneys relating to their knowledge of the existence and public availability of the Smith grant application, and the allegedly cumulative nature of the application in view of what was already before the Patent Office and Dr. Smith's own characterization of what would constitute the invention of the display of single chain antibodies on phage made in a "Declaration" several years after his receipt of the NIH grant.

There is disagreement between CAT and MorphoSys regarding *inter alia* the actual public availability of a Smith grant application, its alleged cumulative and speculative nature in view of material already before the U.S. Patent & Trademark Office and the problems cited by Dr. Smith in his discussion of the display of single chain antibodies on phage in the grant application.

An allegation has also been made that CAT engaged in inequitable conduct by not disclosing to the Patent Office the Smith grant application as relevant to rebut arguments made to the PTO that the art taught away from the display of large peptides on the surface of phage. Nevertheless, the Examiner of the '108 case found that the applicants' arguments regarding that issue had already been rebutted by U.S. Patent No. 5,427,908 to Dower *et al.*, which was already of record in that case and is of record in the present application.

MorphoSys has further alleged that CAT has committed inequitable conduct for their alleged failure to point out the inventor and invention date of each claim that was not commonly owned by CAT and The Medical Research Council ("MRC"), both assignees of the '108 patent, at the time a later invention was made to allow consideration of the applicability of 35 U.S.C. §102(f) or (g) prior art under 35 U.S.C. § 103(a). MorphoSys alleges that CAT has failed to show that the subject matter and the claims were, at the time the invention was made, commonly owned. CAT's position supported by deposition testimony (attached herewith) is that there was a clear understanding that the subject matter of each and every claim was commonly owned at all times and the later written agreements submitted herewith simply memorialized the basic understanding between CAT and MRC.

The following documents are being submitted herewith which were recently filed, held or are relevant to the litigation involving the parent of this application in the U.S.

District Court District of Columbia (U.S. District Court, District of Columbia, Civil Action No. 1:00 CV 00146).

1. First Amended Complaint, filed March 8, 2002;
2. Cambridge Antibody Technology Limited's Answer to First Amended Complaint, filed March 22, 2002;
3. Redacted Agreement between Medical Research Council, Cambridge Antibody Technology Limited and Cambridge Antibody Technology Group plc, dated 1/7/97 (**Subject to the Petition to Expunge**);
4. Deposition Transcript of David W. Clough, taken April 19, 2002;
 - a. E. I. du Pont de Nemours & Co. v. Cetus Corp., 19 USPQ2d 1174, (DC D/ N.Cal. 1990) cited in Deposition Transcript of David W. Clough, taken April 19, 2002;
 - b. OddzOn Products Inc. v. Just Toys Inc., 43 USPQ2d 1641 (CAFC 1997), cited in Deposition Transcript of David W. Clough, taken April 19, 2002;
5. Deposition Transcript of George P. Smith, Ph.D., taken May 14, 2002;
6. Deposition Transcript of Dr. David Chiswell, taken April 29, 2002;
7. Deposition Transcript of Dr. Gregory Paul Winter, taken April 30, 2002;
8. Volume I – Deposition Transcript of Sean Malcolm Walton, taken May 1, 2002;
9. Volume II – Deposition Transcript of Sean Malcolm Walton, taken May 2, 2002;
10. Chiswell memo, dated July 30, 1990, transmitting a copy of the Collaborative Agreement between Cambridge Antibody Technology and The Medical Research Council, dated July 27, 1995 (**Subject to the Petition to Expunge**);
11. Declaration of George P. Smith Under 37 C.F.R. § 1.132, executed June 30, 1995 (submitted during the prosecution of U.S. Application No. 08/322,352);

12. Declaration of Professor Brian K. Kay, Ph.D., executed June 28, 1998 (submitted during the prosecution of European Patent Application No. 91913039.3);
13. Abstract of George P. Smith Grant No. 1R01GM41478-01A1.
14. Smith Grant Application, dated November 1, 1988; and
15. Administration Agreement between Cambridge Antibody Technology Ltd. and Medical Research Council, 8/1/91 (**Subject to the Petition to Expunge**).
16. Fax from John McCafferty (of Cambridge Antibody Technology Limited) to S. Walton (of Mewburn Ellis) Re: Smith Grant Application.
17. E-mail message from John McCafferty (of Cambridge Antibody Technology Limited) to Brian Kay Re: Smith Grant Application.
18. Letter from John McCafferty (of Cambridge Antibody Technology Limited) to Craig Palmer (of Academic Press) Re: Smith Grant Application.
19. Fax to John McCafferty (of Cambridge Antibody Technology Limited) from Craig Panner (of Academic Press) dated June 10, 1996.
20. Smith, G. P., "1988 – A Year of Discovery", *Phage Display of Peptides and Proteins*, Academic Press, Inc. (1996), pp. xvii-xix.
21. Northern Telecom Inc. v. Datapoint Corp., 15 USPQ 1321 (CAFC 1990).

Documents 1-12 and 15 are individually listed below with cites to the relevant testimony.

First Amended Complaint, filed March 8, 2002

| | | |
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| 6 | 1 | Allegations regarding Smith grant/ |
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**Cambridge Antibody Technology Limited's
Answer to First Amended Complaint, filed March 22, 2002**

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| 7 | 8 | Response to allegations regarding Smith grant/ inequitable conduct |
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Deposition Transcript of David W. Clough, taken April 19, 2002

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| 156 | 9; |
| 176 | 8-24 |

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| 105 | 13 | Testimony regarding '96 knowledge of Smith grant |
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| 109 | 20 |
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| 176 | 18 | Testimony regarding DuPont v. Cetus |

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| 177 | 20 |
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| 179 | 14-15 | Testimony regarding Oddzn Products v. Just Toys Inc. |

Deposition Transcript of George P. Smith, Ph.D., taken May 14, 2002

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| 31 | 8 | Testimony regarding Smith grant |
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| 39 | 17; | |
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| 50 | 25 | |
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| 53 | 25; | |
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| 62 | 12; | |
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| 65 | 25; | |
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| 68 | 8; | |
| 92 | 1-22; | |
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| 104 | 10-17; | |
| 106 | 12-21; | |
| 111 | 7 | |
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| 112 | 12; | |
| 132 | 12-25; | |
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| 142 | 16; | |
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| 149 | 1; | |
| 155 | 14-22; | |
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| 158 | 4; | |
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Deposition Transcript of George P. Smith, Ph.D., taken May 14, 2002

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| 166 | 10 | Testimony regarding Smith grant |
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Deposition Transcript of Dr. David Chiswell, taken April 29, 2002

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| 119 | 23 | Testimony regarding Smith grant |
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| 37 | 2 | Testimony regarding Chiswell memo |
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| 66 | 4; | |
| 94 | 17 | |
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| None | | Testimony regarding '96 knowledge of Smith grant |

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| 157 | 7 | Testimony regarding common ownership |
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| 158 | 17; | |
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Deposition Transcript of Dr. Gregory Paul Winter, taken April 30, 2002

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| 123 | 11-14; | Testimony regarding Smith grant |
| 130 | 22 | |
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| None | | Testimony regarding '96 knowledge of Smith grant |

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| 74 | 1 | Testimony regarding common ownership |
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Volume I

Deposition Transcript of Sean Malcolm Walton, taken May 1, 2002

Volume II

Deposition Transcript of Sean Malcolm Walton, taken May 2, 2002

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| 16 | 8 | Testimony regarding Smith grant |
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| 18 | 2; | |
| 31 | 20 | |
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| 59 | 23; | |
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(Continued)

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| 93 | 25 | Testimony regarding Smith grant: |
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Volume I
Deposition Transcript of Sean Malcolm Walton, taken May 1, 2002
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(Continued)

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| 249 | 23 | Testimony regarding Smith grant: |
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| 257 | 22; | |
| 267 | 5 | |
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| 268 | 18; | |
| 270 | 21 | |
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| 277 | 22; | |
| 285 | 2 | |
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| 289 | 19; | |
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| 322 | 18-23; | |
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| 328 | 11 | |

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| 82 | 17 | Testimony regarding '96 knowledge of Smith grant: |
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Volume I
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Volume II
Deposition Transcript of Sean Malcolm Walton, taken May 2, 2002
(Continued)

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| 133 | 15 | Testimony regarding '96 knowledge of Smith grant: |
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| 140 | 25; | |
| 205 | 5 | |
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| 271 | 19 | |
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| 289 | 19; and | |
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| 179 | 22 | Testimony regarding common ownership: |
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| 184 | 17; | |
| 186 | 16 | |
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| 191 | 8; | |
| 192 | 22 | |
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| 195 | 19 | |

Chiswell memo, dated July 30, 1990,
(transmitting a copy of the Collaborative Agreement between Cambridge Antibody
Technology and The Medical Research Council, dated July 27, 1995)
(Subject to Petition to Expunge)

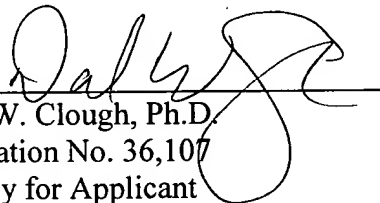
Declaration of George P. Smith Under 37 C.F.R. § 1.132

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| 2 | 7-9; | Inequitable conduct |
| 4 | 3-9 | |

Finally, attorney for applicants submit herewith a reference (Il'ichev, A.A., *et al.*, "M13 Filamentous Bacteriophage in Protein Engineering", *Molekulyarnaya Biologiya*, Vol. 24, No. 2, pp. 530-535, (March-April 1990)(two versions – one in Russian (with a one-page abstract) and a translation of the same reference) and a patent which were recently brought to applicants' attention.

The Commissioner is hereby authorized to charge any additional fees which may be required in this application under 37 C.F.R. §§1.16-1.17 during its entire pendency, or credit any overpayment, to Deposit Account No. 50-1214. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-1214.

Respectfully submitted,



David W. Clough, Ph.D.
Registration No. 36,107
Attorney for Applicant

October 16, 2002
Katten Muchin Zavis Rosenman
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(312) 902-5464
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| Substitute for form 1449A/PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Use several sheets if necessary) | | | | | | | | | | Docket Number 213839-00011 | | | | Application Number 09/417,479 | | | | | |
| | | | | | | | | | | Applicant McCafferty <i>et al.</i> | | | | | | | | | |
| | | | | | | | | | | Filing Date October 13, 1999 | | | | Group Art Unit 1627 | | | | | |
| U. S. PATENT DOCUMENTS | | | | | | | | | | | | | | | | | | | |
| EXAMINER INITIAL | | DOCUMENT NUMBER | | | | | | | DATE | | NAME | | | CLASS | | SUB CLASS | | FILING DATE IF APPROP. | |
| 1 | | 6 3 3 1 4 1 5 | | | | | | | | | Cabilly <i>et al.</i> | | | 435 | | 69.6 | | 6/10/88 | |
| FOREIGN PATENT DOCUMENTS | | | | | | | | | | | | | | | | | | | |
| | | DOCUMENT NUMBER | | | | | | | DATE | | COUNTRY | | | CLASS | | SUB CLASS | | Translation | |
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| OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.) | | | | | | | | | | | | | | | | | | | |
| 2 | | First Amended Complaint, Filed March 8, 2002 - Morphosys AG v. Cambridge Antibody Technology Limited, Case No. | | | | | | | | | | | | | | | | | |
| | | 1:00-CV-00146 (24 pages) (U.S. District Court, District of Columbia)(signed by John S. Skilton, Attorney for Plaintiff.) | | | | | | | | | | | | | | | | | |
| 3 | | Cambridge Antibody Technology Limited's Answer to First Amended Complaint, Filed March 22, 2002 - Morphosys AG v. | | | | | | | | | | | | | | | | | |
| | | Cambridge Antibody Technology Limited, Case No. 1:00-CV-00146 (30 pages) (U.S. District Court, District of Columbia)(signed by Brian H. Corcoran, Attorney for Defendant). | | | | | | | | | | | | | | | | | |
| 4 | | Ilichev, A.A., <i>et al.</i> , "M13 Filamentous Bacteriophage in Protein Engineering", Molekulyarnaya Biologiya, Vol. 24, No. 2, | | | | | | | | | | | | | | | | | |
| | | pp. 530-535, (March-April 1990). | | | | | | | | | | | | | | | | | |
| 5 | | Ilichev, A.A., <i>et al.</i> , "M13 Filamentous Bacteriophage for Protein Engineering", Molekulyarnaya Biologiya, Vol. 24, No. 2, | | | | | | | | | | | | | | | | | |
| | | pp. 530-535, (March-April 1990). (In Russian with Translated Abstract) | | | | | | | | | | | | | | | | | |
| 6 | | Redacted Agreement Between Medical Research Council and Cambridge Antibody Technology Limited and Cambridge | | | | | | | | | | | | | | | | | |
| | | Antibody Technology Group plc, made 01 January 1997 | | | | | | | | | | | | | | | | | |
| 7 | | Deposition Transcript of David W. Clough, taken April 19, 2002 (Morphosys AG v. Cambridge Antibody Technology Limited, | | | | | | | | | | | | | | | | | |
| | | (U.S. District Court, Northern District of Illinois, Eastern Division). | | | | | | | | | | | | | | | | | |
| 8 | | E.I. du Pont de Nemours v. Cetus Corp., 19 USPQ2d 1174, (DC N.Cal. 1990). | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | |
| 9 | | OddzOn Products Inc. v. Just Toys Inc., 43 USPQ2d 1641(CAFC 1997). | | | | | | | | | | | | | | | | | |
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| EXAMINER | | | | | | | | | | | | DATE CONSIDERED | | | | | | | |
| EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP § 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to the applicant. | | | | | | | | | | | | | | | | | | | |

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PTO/SB/08A (10-01)

Approved for use through 10/31/2002. OMB 0651-0031

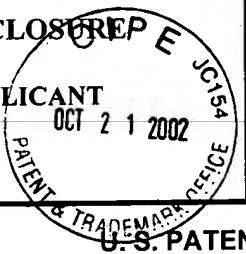
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it contains a valid OMB control number.

TEC. CENTER 1000/2900

Sheet 2 of 3

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| Substitute for form 1449A/PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Use several sheets if necessary) | | | | Docket Number 213839-00011 | | Application Number 09/417,479 | |
| | | | | Applicant McCafferty <i>et al.</i> | | | |
| | | | | Filing Date October 13, 1999 | | Group Art Unit 1627 | |



| U.S. PATENT DOCUMENTS | | | | | | | | | |
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| EXAMINER INITIAL | DOCUMENT NUMBER | DATE | NAME | CLASS | SUB CLASS | FILING DATE IF APPROP. | | | |
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| FOREIGN PATENT DOCUMENTS | | | | | | | |
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| | DOCUMENT NUMBER | DATE | COUNTRY | CLASS | SUB CLASS | Translation | |
| | | | | | | Yes | No |
| | | | | | | | |

| OTHER DOCUMENTS | | | (Including Author, Title, Date, Pertinent Pages, Etc.) |
|-----------------|--|--|--|
| 10 | Deposition Transcript of George P. Smith, Ph.D., taken 14 May 2002, Morphosys AG v. Cambridge Antibody Technology Limited, Case No. 1:00-CV-00146 (30 pages) (U.S. District Court, District of Columbia.) | | |
| 11 | Deposition Transcript of Dr. David Chiswell, taken 29 April 2002; Morphosys AG v. Cambridge Antibody Technology Limited, Case No. 1:00-CV-00146 (30 pages) (U.S. District Court, District of Columbia.) | | |
| 12 | Deposition Transcript of Dr. Gregory Paul Winter, taken April 30, 2002; Morphosys AG v. Cambridge Antibody Technology Limited, Case No. 1:00-CV-00146 (30 pages) (U.S. District Court, District of Columbia.) | | |
| 13 | Vol. I - Deposition Transcript of Sean Malcolm Walton, taken 01 May 2002, Morphosys AG v. Cambridge Antibody Technology Limited, Case No. 1:00-CV-00146 (30 pages) (U.S. District Court, District of Columbia.) | | |
| 14 | Vol. II - Deposition Transcript of Sean Malcolm Walton, taken 02 May 2002, Morphosys AG v. Cambridge Antibody Technology Limited, Case No. 1:00-CV-00146 (30 pages) (U.S. District Court, District of Columbia.) | | |
| 15 | Chiswell memo, dated 30 July 1990, transmitting a copy of the Collaborative Agreement between Cambridge Antibody Technology and The Medical Research Council, dated July 27, 1995. | | |
| 16 | Declaration of George P. Smith, Ph.D., Under 37 C.F.R. § 1.132, executed 30 June 1995 (submitted during the prosecution of U.S. Application No. 08/322,352). | | |
| 17 | Declaration of Brian K. Kay, Ph.D., executed 28 June 1998, (submitted during the prosecution of European Appln. No. 91913039.3) | | |

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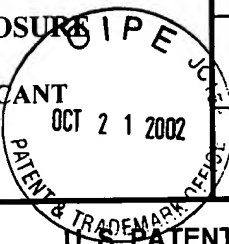
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Sheet 3 of 3

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| Substitute for form 1449A/PTO | | | | Docket Number 213839-00011 | | Application Number 09/417,479 | |
| INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Use several sheets if necessary) | | | | Applicant McCafferty et al. | | | |
| | | | | Filing Date October 13, 1999 | | Group Art Unit 1627 | |



| U.S. PATENT DOCUMENTS | | | | | | | |
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| OTHER DOCUMENTS | | (Including Author, Title, Date, Pertinent Pages, Etc.) |
|-----------------|--|---|
| 18 | | Abstract of George P. Smith, Grant No. 1R01GM41478-01A1, Project Start Date: July 1, 1989. |
| 19 | | Smith Grant Application, entitled: "Filamentous Phage Physiology", dated November 1, 1988 |
| 20 | | Administration Agreement between Cambridge Antibody Technology Ltd. and Medical Research Council, dated 01 August 1991 (Redacted). |
| 21 | | Fax from John McCafferty (of Cambridge Antibody Technology Limited) to Sean Walton (of Mewburn Ellis) regarding the Smith grant application. |
| 22 | | E-mail message from John McCafferty (of Cambridge Antibody Technology Limited) to Brian Kay regarding the Smith grant application |
| 23 | | Letter to Craig Panner (of the Academic Press) from John McCafferty (Cambridge Antibody Technology Limited) regarding the Smith grant application |
| 24 | | Fax to John McCafferty, Ph.D. (of Cambridge Antibody Technology Limited) from Craig Panner (of Academic Press) dated June 10, 1996. |
| 25 | | Smith, G. P., "1988-- A Year of Discovery", <i>Phage Display of Peptides and Proteins</i> , Academic Press, Inc., (1996), pp. xvii-xix. |
| 26 | | Northern Telecom Inc. v. Datapoint Corp., 15 USPQ 1321., (CAFC 1990). |

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